

REMARKS

This is in response to the Office Action mailed May 20, 2003 (the "Office Action"). In the Office Action, claims 1 through 32 were provisionally rejected under the judicially created doctrine of obviousness type double patenting in view of claims 1 through 29 of Applicants' co-pending application No. 09/965,978. It was noted in the Office Action that this rejection was provisional, since the claims which are contended to be conflicting have not yet in fact been patented.

In the event the remaining basis for objection of the claims can be overcome, namely the rejection of claims 1 through 21, and 24 through 32 under 35 U.S.C. §103(a) in view of U.S. Patent No. 4,286,670 to Ackerman, Applicant intends to timely file a terminal disclaimer in compliance with 37 C.F.R. §1.32(c) to overcome the above referenced provisional rejection of claims 1 through 32. Applicant respectfully requests the requirement to file a terminal disclaimer be held in abeyance, however, until indication of allowable subject matter.

The Ackerman patent, which forms the basis of the §103(a) rejection, discloses a rear-tined tiller having a handle with two operating positions. In a first operating position, Ackerman's tiller operates as a conventional rear-tined tiller. However, when the handle is pivoted towards the front of the machine, and the transmission activated to reverse the direction of rotation of the wheels, the tiller becomes, in essence, a front-tined tiller.

The handle of Ackerman's tiller is movable for the purposes of providing two separate operating positions, not for the purpose of making the machine more compact. From a review of Ackerman's disclosure, Ackerman's tiller does not appear to become appreciably more compact in either of the two handle operating positions. This is in

contrast to Applicants' machine, which includes a handle having a first portion movable between extended and retracted positions, Applicants' machine being configured such that when the first portion of the handle is moved to the retracted position, the overall height of the machine is significantly reduced and allows for the machine to be readily transported in a relatively compact configuration. The Ackerman tiller does not address these concerns, and it is respectfully submitted that it would not be obvious to so provide Ackerman.

Claim 1 has been amended to highlight these distinctions and recites the significant height reduction feature of Applicants' machine. It is respectfully submitted that claim 1 clearly defines Applicants' invention over the Ackerman tiller.

Claims 2 through 18 are dependent claims, which depend directly from claim 1, and accordingly, add further limitations thereto. For this reason, it is respectfully submitted that such claims are also allowable. In particular, with respect to claims 7 through 12, it is also submitted that the prior art fails to disclose the dimensional and volumetric limitations set forth in these claims. As set forth in the specification, such limitations provide for enhanced portability and transport of Applicants' invention.

In regards to claim 2, the Ackerman patent fails to disclose the recited castor wheels.

Independent claim 9 has been amended similarly as was claim 1, discussed above, and is believed to be allowable for the same reasons as claim 1, and further, for the reason that it recites a lock for selectively locking the handle in the extended and retracted positions. Claim 20, which depends on claim 19, is likewise allowable for the same reasons as claim 19, and in that it adds additional limitations to such claim.

Independent claim 21 includes similar limitations as recited in claim 19, and is believed allowable for the same reasons. Claim 22, also an independent claim is similar to claims 19 and 21, and includes further limitation not found in claims 19 and 21, and is likewise believed allowable.

Claim 23, which depends on claim 21, should be allowed for the same reasons as is claim 22.

Claim 24 is an independent claim and presently stands rejected under §103(a) in view of the Ackerman patent. Applicants respectfully submit that Ackerman is not a proper reference against these claims. Specifically, Ackerman neither teaches nor suggests the bed edging blade recited in independent claim 24, nor in independent claim 31. Ackerman tiller appears to use a conventional blade design. Accordingly, Applicants respectfully submit that a *prima facie* rejection has not been made for claim 24, and claims 25 through 30, which depend thereon on claim 24, and thus are allowable for the same reasons as are claims 24 and 31.

Independent claim 32 recites an earth working machine also having a limitation that when its handle is moved to a retracted position, the height of the machine is significantly reduced. Such a claim recites a lock for selectively locking the handle in extended and retracted positions.

New claims 33 through 39 have been added to more completely encompass the inventive aspects of the present invention.

Applicants have also rescinded their claim in the present application of domestic priority based on Application No. 09/587,631, filed June 5, 2000, now U.S. Patent No. 6,457,267, issued October 1, 2002 (which also discloses Applicants' blade discussed

above), and, Application Serial No. 29/133,267, filed November 27, 2000, now U.S. Patent No. D463,804 (which discloses a trencher blade), recited in the first sentence of the Specification, and Applicants' rescission of such priority is manifested by way of amendment above, with the amendment of the first sentence of the Specification.

In view of the foregoing, reconsideration is respectfully requested as is also the withdrawal of the outstanding rejection of the claims.

Applicants respectfully request that the application be passed to issuance in the due course of Patent Office business.

The Commissioner is authorized to charge Deposit Account 12-0760 for the fees for the newly added claims, and also for any other necessary fees, and to credit any fee overpayment to said Account.

Respectfully submitted,
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